

1353.232

(3) To issue orders for paid advertisements

(4) To issue orders for construction or dismantling, demolition, or removal of improvements.

[50 FR 19365, May 8, 1985, and 51 FR 1377, Jan. 13, 1986]

1353.232 Contract financing.

A Department approved procurement request form certifies the availability of adequate funds for contract actions (See FAR 32.702). The Department's procurement request form also transmits technical and other specifications

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of the request, administrative approvals and clearances, and information for processing payments.

[50 FR 19365, May 8, 1985, and 51 FR 1377, Jan. 13, 1986]

1353.232-2 (CD 45).

CD 45 (3/76) Requisitioning Form. CD 45 is prescribed for Department-wide use in requesting action from the servicing contract office. This form is the vehicle for administrative approvals, clearances, and certification of the availability of adequate funds as specified in FAR 32.702.

CHAPTER 14—DEPARTMENT OF THE INTERIOR

SUBCHAPTER A—GENERAL

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SUBCHAPTER A—GENERAL

PART 1401—DEPARTMENT OF THE INTERIOR ACQUISITION REGULATION SYSTEM

Subpart 1401.1—Purpose, Authority, Issuance

Sec.

1401.106 OMB approval under the Paperwork Reduction Act.

Subpart 1401.3—Agency Acquisition Regulations

1401.303 Publication and codification.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

SOURCE: 49 FR 14252, Apr. 10, 1984, unless otherwise noted.

Subpart 1401.1—Purpose, Authority, Issuance

1401.106 OMB approval under the Paperwork Reduction Act.

The information collection and recordkeeping requirements have been approved by the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The following OMB control numbers apply:

DIAR segment	OMB control No.
1452.226-70	1084-0019

[62 FR 18054, Apr. 14, 1997, as amended at 62 FR 52266, Oct. 7, 1997]

Subpart 1401.3—Agency Acquisition Regulations

1401.303 Publication and codification.

(a)(1) Implementing and supplementing regulations issued under the DAIR System are codified under chapter 14 in title 48, Code of Federal Regulations and shall parallel the FAR in format, arrangement, and numbering system.

(2)(i) Departmentwide regulations are assigned parts 1401 through 1499 under 48 CFR, chapter 14.

(ii) Where material in the FAR requires no implementation, there will

be no corresponding number in the DIAR. Thus, there are gaps in the DIAR sequence of numbers where the FAR, as written, is deemed adequate. Supplementary material shall be numbered as specified in FAR 1.303.

(3)(i) Bureauwide regulations are authorized for codification in appendices to chapter 14 as assigned by the Director, PAM.

(ii) Regulations implementing the FAR or DIAR are numbered using parts 1401 through 1479. Supplementary material is numbered using parts 1480 through 1499. Numbers for implementing or supplementing regulations by bureaus/offices are preceded by a prefix to the number 14 (indicating chapter 14—DIAR) for the organization indicated by lettered appendices as follows:

- (A) Bureau of Indian Affairs—BIA
- (B) Bureau of Reclamation—WBR
- (C) Interior Service Center—ISC
- (D) Bureau of Land Management—LLM
- (E) U.S. Geological Survey—WGS
- (F) Office of Surface Mining Reclamation and Enforcement—LSM
- (G) U.S. Minerals Management Service—LMS
- (H) National Park Service—FNP
- (I) U.S. Fish and Wildlife Service—FWS

(e.g., FAR 1.3 then DIAR 1401.3 [Department level] then in appendix A, BIA 1401.3 [Bureau level])

(b) [Reserved]

[62 FR 18054, Apr. 14, 1997]

PART 1403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1403.5—Other Improper Business Practices

Sec.

1403.570 Restrictions on contractor advertising.

1403.570-1 Policy.

1403.570-3 Contract clause.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

SOURCE: 61 FR 5519, Feb. 13, 1996, unless otherwise noted.

1403.570

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**Subpart 1403.5—Other Improper
Business Practices**

**1403.570 Restrictions on contractor
advertising.**

1403.570-1 Policy.

Award of a contract does not signify endorsement of the supplies or services purchased, nor does it signify agreement with any views espoused by officials of the awards. It is vital to the integrity of the procurement system to avoid even the appearance of an improper preference toward a particular

vendor. Therefore, contractors shall not be permitted to publicize, or otherwise circulate, promotional materials which state or imply Governmental endorsement of a product, service or position which the contractor represents.

1403.570-3 Contract clause.

CO's shall include the clause at 48 CFR 1452.203-70, Restriction on Endorsements, in all solicitations, contracts and agreements which are not executed in accordance with SAT procedures.

SUBCHAPTER B—ACQUISITION PLANNING [RESERVED]

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 1415—CONTRACTING BY NEGOTIATION

Subpart 1415.1—General Requirements for Negotiation

Sec.

1415.106 Contract clauses.

1415.106-70 Examination of records by the Department of the Interior clause.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

SOURCE: 49 FR 14259, Apr. 10, 1984, unless otherwise noted.

Subpart 1415.1—General Requirements for Negotiation

1415.106 Contract clauses.

1415.106-70 Examination of records by the Department of the Interior clause.

The contracting officer shall insert the clause at 1452.215-70, Examination of Records by the Department of the Interior, in all contracts requiring the clause a FAR 52.215-1, Examination of Records by the Comptroller General, as prescribed in FAR 15.106-1(b).

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 1426—OTHER SOCIO-ECONOMIC PROGRAMS

Subpart 1426.70—Indian Preference

Sec.

- 1426.7000 Scope of subpart.
- 1426.7001 Definitions.
- 1426.7002 Statutory requirements.
- 1426.7003 Applicability and contract clause.
- 1426.7004 Compliance enforcement.
- 1426.7005 Tribal preference requirements.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c) and 5 U.S.C. 301); Pub. L. 93-638, 88 Stat. 2205 (25 U.S.C. 450e(b)).

SOURCE: 60 FR 53279, Oct. 13, 1995, unless otherwise noted.

Subpart 1426.70—Indian Preference

1426.7000 Scope of subpart.

This subpart prescribes policies and procedures for implementation of section 7(b) of the Indian Self-Determination and Education Assistance Act (Public Law 93-638, 88 Stat. 2205, 25 U.S.C. 450e(b)).

1426.7001 Definitions.

For purposes of this subpart the following definitions shall apply:

Indian means a person who is a member of an Indian Tribe. If the contractor has reason to doubt that a person seeking employment preference is an Indian, the contractor shall grant the preference but shall require the individual within thirty (30) days to provide evidence from the Tribe concerned that the person is a member of the Tribe.

Indian organization means that governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (Pub. L. 93-262, 88 Stat. 77; 25 U.S.C. 1451).

Indian-owned economic enterprise means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 percent of the enterprise.

Indian reservation includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act, (Pub. L. 92-203, 85 Stat. 688; 43 U.S.C. 1601 *et seq.*).

Indian Tribe means an Indian Tribe, band, nation, or other recognized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (Pub. L. 92-203, 85 Stat. 688; 43 U.S.C. 1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

On or near an Indian reservation means on a reservation or the distance within that area surrounding an Indian reservation(s) that a persons seeking employment could reasonably be expected to commute to and from in the course of a work day.

1426.7002 Statutory requirements.

Section 7(b) of the Indian Self-Determination and Education Assistance Act requires that any contract or sub-contract entered into pursuant to that Act, the Act of April 16, 1934 (48 Stat. 596; 25 U.S.C. 452), as amended, (the Johnson-O'Malley Act), or any other Act authorizing contracts with Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible:

(a) Preferences and opportunities for training and employment in connection with the administration of such contracts shall be given to Indians, and

(b) Preference in the award of sub-contracts in connection with the administration of such contracts shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (Sec. 3, Pub. L. 93-262; 88 Stat. 77; 25 U.S.C. 1452).

Department of the Interior

1426.7005

1426.7003 Applicability and contract clause.

(a) The Contracting Officer (CO) shall insert the clause at 1452.226-70, Indian Preference—Department of the Interior, in solicitations issued and contracts awarded by

(1) The Bureau of Indian Affairs,

(2) A contracting activity other than the Bureau of Indian Affairs when the contract is entered into pursuant to an act specifically authorizing contracts with Indian organizations and

(3) A contracting activity other than the Bureau of Indian Affairs where the work to be performed is specifically for the benefit of Indians and is in addition to any incidental benefits which might otherwise accrue to the general public.

(b) The CO shall insert the clause at 1452.226-71, Indian Preference Program—Department of the Interior, in all solicitations issued and contracts awarded by a contracting activity which may exceed \$50,000, which contain the clause required by paragraph (a) of this section and where it is determined by the CO, prior to solicitation, that the work under the contract will be performed in whole or in part on or near an Indian reservation(s). The Indian Preference Program clause may also be included in solicitations issued and contracts awarded by a contracting activity which may not exceed \$50,000, but which contain the clause required by paragraph (a) of this section and which, in the opinion of the CO, offer substantial opportunities for Indian employment, training or sub-contracting.

1426.7004 Compliance enforcement.

(a) The CO is responsible for conducting periodic reviews of the contractor to ensure compliance with the requirements of the clauses prescribed in 1426.7003. These reviews may be con-

ducted with the assistance of the Indian Tribe(s) concerned.

(b) Complaints of noncompliance with the requirements of the clauses prescribed under 1426.7003 which are received in writing by the contracting activity shall be promptly investigated by the CO and a written disposition of the complaint shall be prepared.

1426.7005 Tribal preference requirements.

(a) Where the work under a contract is to be performed on an Indian reservation, the CO may supplement the clause at 1452.226-71, Indian Preference Program—Department of the Interior, by adding specific Indian preference requirements of the Tribe on whose reservation the work is to be performed. The supplemental requirements shall be jointly developed for the contract by the CO and the Tribe. Supplemental preference requirements must represent a further implementation of the requirements of section 7(b) of Public Law 93-638 and must be approved by the SOL for legal sufficiency before being added to a solicitation and resultant contract. Any supplemental preference requirements to be added to the clause at 1452.226-71 shall be included in the solicitation and clearly identified in order to ensure uniform understanding of the additional requirements by all prospective bidders or offerors.

(b) Nothing in this subpart shall be interpreted to preclude Tribes from independently developing and enforcing their own tribal preference requirements. Such independently developed tribal preference requirements shall not, except as provided in paragraph (a) of this section, become a requirement in contracts covered under this subpart 1426.70 and must not hinder the Government's right to award contracts and to administer their provisions.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1428—BONDS AND INSURANCE

Subpart 1428.3—Insurance

Sec.

1428.301 Policy.

1428.306 Insurance under fixed-price contracts.

1428.306-70 Insurance for aircraft services contracts.

1428.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1428.311-2 Contract clause.

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c) and 5 U.S.C. 301.

SOURCE: 60 FR 53280, Oct. 13, 1995, unless otherwise noted.

Subpart 1428.3—Insurance

1428.301 Policy.

It is the policy of DOI to insure its own risks only when such action is in the best interest of the Government. Circumstances where contractors are required to carry insurance are listed under FAR 28.301 and 28.306. In these circumstances, the CO shall insert the clause at 1452.228-70, Liability Insurance—Department of the Interior, in solicitations and contracts.

1428.306 Insurance under fixed-price contracts.

1428.306-70 Insurance for aircraft services contracts.

(a) *Policy.* The CO shall insert minimum insurance requirements in aircraft services contracts in order to protect the Government and its contractors.

(b) *Applicability.* The clauses prescribed by paragraph (c) of this section are applicable to all fixed-price con-

tracts involving use of aircraft with either a contractor-furnished or a Government-furnished pilot except for one-time charters when Government exposure is minimal and time limitations are present.

(c) *Clauses.* The following clauses shall be used as prescribed:

(1) The CO shall insert the clause at 1452.228-71, Aircraft and General Public Liability Insurance—Department of the Interior, in solicitations and contracts when a fixed-price contract for operation of aircraft where the Government is using a contractor-furnished pilot is contemplated.

(2) The CO shall insert the clause at 1452.228-72, Liability for Loss or Damage—Department of the Interior, in solicitations and contracts when a fixed-price contract for use of aircraft where the Government does not have a property interest and is using a Government-furnished pilot is contemplated.

(3) The CO shall insert the clause at 1452.228-73, Liability for Loss or Damage—Department of the Interior (Property Interest), in solicitations and contracts when a fixed-price contract for use of aircraft where the Government has a property interest in the aircraft and is using a Government-furnished pilot (e.g., a lease with purchase option) is contemplated.

1428.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

1428.311-2 Contract clause.

The CO shall modify the clause at FAR 52.228-7, Insurance—Liability to Third Persons, in accordance with 1452.228-7, and insert in solicitations and contracts as prescribed in FAR 28.311-2.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 1437—UTILIZATION OF WOODY BIOMASS

Sec.

1437.100 General.

1437.101 When can woody biomass be removed?

1437.102 When is the biomass clause required?

1437.103 Format of woody biomass utilization clause.

1437.104 Definitions.

AUTHORITY: 30 U.S.C. 601–604, 611, as amended; 16 U.S.C. 668dd; 16 U.S.C. 1; 25 U.S.C. 3101 *et seq.*; 43 U.S.C. 1701 *et seq.*

SOURCE: 69 FR 52609, Aug. 27, 2004, unless otherwise noted.

1437.100 General.

This part establishes consistent and efficient procedures to allow contractors the option to remove woody biomass by-products from Department of the Interior land management activities where ecologically appropriate. If the woody biomass has fair market value and payment is required, or as required by regulation, Bureau policy or the Mineral Materials Disposal Act of 1947 (30 U.S.C. 601 *et seq.*), a separate timber/vegetative sales contract must be executed.

1437.101 When can woody biomass be removed?

(a) The Department of the Interior allows and encourages contractors to remove and use woody biomass from project areas when:

(1) The biomass is generated during land management service contract activity; and

(2) Removal is ecologically appropriate.

(b) A contractor removing biomass under this part shall:

(1) Do so only within legal limits applicable to the contractor, including National Environmental Policy Act (NEPA) compliance; and

(2) If required, comply with the terms, conditions and special provisions of the applicable timber/vegetative sales notice.

1437.102 When is the biomass utilization clause required?

This section applies to any solicitation or contract that is expected to generate woody biomass that meets the requirements of §1437.101 unless biomass removal is already required in the service contract. The agency contracting officer will:

(a) Insert in the solicitation or contract the clause in §1437.103;

(b) Specify any limitations on types of woody biomass that may not be removed; and

(c) Specify any areas from which woody biomass must not be removed.

1437.103 Format of woody biomass utilization clause.

The contracting officer must insert a clause reading substantially as follows in each solicitation and contract that meets the criteria in §1437.101(a):

UTILIZATION OF WOODY BIOMASS

1. The contractor may remove and utilize woody biomass, if:

(a) Project work is progressing as scheduled; and

(b) Removal is completed before contract expiration.

2. To execute this option, the contractor must submit a written request to the Government.

3. Following receipt of the written request, and if appropriate, the Government and the contractor will negotiate and execute a separate timber/vegetative sales contract. Payment under this sales contract must be at a price equal to or greater than the appraised value before the removal of any woody biomass. The contractor must make any appropriate payment specified in this timber/vegetative sales contract.

4. If required by law, regulation or Bureau policy, the Government will prepare a timber/vegetative sales notice and/or prospectus, including volume estimates, appraised value and any appropriate special provisions.

5. The contractor must treat any woody biomass not removed in accordance with the specifications in the service contract.

6. The sales contract and service contract are severable; default or termination under either contract does not remove the contractor from payment or performance obligations under the other contract.

1437.104 Definitions.

Ecologically appropriate means those situations where the Deciding Officer and/or Contracting Officer determine it is not necessary to retain specific woody material and/or reserve specific areas from woody biomass removal to meet ecological objectives. For example, it may be necessary to retain snags or small woody debris to meet wildlife habitat objectives, or to create specific prescribed burning conditions to stimulate native plant development; therefore it would not be appropriate to allow removal of the specified woody biomass.

Timber/vegetative sales contract and/or notice means the agency-specific authorized contract instrument for the sale, barter, exchange, billing or other

compensation for the payment, removal, and/or transportation of woody biomass material.

Woody biomass means the trees and woody plants, including limbs, tops, needles, leaves, and other woody parts, grown in a forest, woodland, or rangeland environment, that are the by-products of management, restoration and/or hazardous fuel reduction treatment.

Woody biomass utilization or use means the harvest, sale, offer, trade, and/or utilization of woody biomass to produce the full range of wood products, including timber, engineered lumber, paper and pulp, furniture and value-added commodities, and bio-energy and/or bio-based products such as plastics, ethanol and diesel.

SUBCHAPTER G—CONTRACT MANAGEMENT [RESERVED]

SUBCHAPTER H—CLAUSES AND FORMS

PART 1452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

1452.000 Scope of part.

Subpart 1452.2—Texts of Provisions and Clauses

1452.200 Scope of subpart.

1452.203-70 Restriction on endorsements.

1452.215-70 Examination of records by the Department of the Interior.

1452.215-71 Use and disclosure of proposal information.

1452.226-70 Indian preference.

1452.226-71 Indian preference program.

1452.228-7 Insurance—liability to third persons.

1452.228-70 Liability insurance.

1452.228-71 Aircraft and general public liability.

1452.228-72 Liability for loss or damage.

1452.228-73 Liability for loss or damage (property interest).

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

SOURCE: 49 FR 14267, Apr. 10, 1984, unless otherwise noted.

1452.000 Scope of part.

This part prescribes Department of the Interior provisions and clauses for use in acquisition.

Subpart 1452.2—Texts of Provisions and Clauses

1452.200 Scope of subpart.

This subpart sets forth the texts of all DIAR provisions and clauses. Consistent with the numbering scheme prescribed in FAR 52.101 and the approach used in Far Subpart 52.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the DIAR in which provisions and clause requirements are addressed.

1452.203-70 Restriction on endorsements.

As prescribed in 48 CFR 1403.570-3, insert the following clause in all solicitations, contracts and agreements which are expected to exceed the simplified acquisition threshold.

RESTRICTION ON ENDORSEMENTS— DEPARTMENT OF THE INTERIOR (NOV 1995)

The contractor shall not refer to contracts awarded by the Department of the Interior in commercial advertising, as defined in FAR 31.205-1, in a manner which states or implies that the product or service provided is approved or endorsed by the Government, or is considered by the Government to be superior to other products or services. This restriction is intended to avoid the appearance of preference by the Government toward any product or service. The contractor may request a determination as to the propriety of promotional material from the CO.

(End of clause)

[61 FR 5520, Feb. 13, 1995]

1452.215-70 Examination of records by the Department of the Interior.

As prescribed in 1415.106-1, insert the following clause in all contracts containing the clause at FAR 52.215-1, Examination of Records by the Comptroller General (see FAR 15.106-1(b)):

EXAMINATION OF RECORDS BY THE DEPARTMENT OF THE INTERIOR (APR 1984)

For purposes of the Examination of Records by the Comptroller General (APR 1984) clause of this contract (FAR 52.214-1), the Secretary of the Interior, the Inspector General, and their duly authorized representative(s) from the Department of the Interior shall have the same access and examination rights as the Comptroller General of the United States.

(End of clause)

1452.215-71 Use and disclosure of proposal information.

As prescribed in 1415.413-70, insert the following provision in requests for proposals and requests for quotations instead of the provision at FAR 52.215-12:

USE AND DISCLOSURE OF PROPOSAL INFORMATION—DEPARTMENT OF THE INTERIOR (APR 1984)

(a) Definitions. For the purposes of this provision and the Freedom of Information Act (5 U.S.C. 552), the following terms shall have the meaning set forth below:

(1) *Trade Secret* means an unpatented, secret, commercially valuable plan, appliance, formula, or process, which is used for making, preparing, compounding, treating or

processing articles or materials, which are trade commodities.

(2) *Confidential commercial or financial information* means any business information (other than trade secrets) which is exempt from the mandatory disclosure requirement of the Freedom of Information Act, 5 U.S.C. 552. Exemptions from mandatory disclosure which may be applicable to business information contained in proposals include exemption (4), which covers "commercial and financial information obtained from a person and privileged or confidential," and exemption (9), which covers "geological and geophysical information, including maps, concerning wells."

(b) If the offeror, or its subcontractor(s), believes that the proposal contains trade secrets or confidential commercial or financial information exempt from disclosure under the Freedom of Information Act, (5 U.S.C. 552), the cover page of each copy of the proposal shall be marked with the following legend:

"The information specifically identified on pages ____ of this proposal constitutes trade secrets or confidential commercial and financial information which the offeror believes to be exempt from disclosure under the Freedom of Information Act. The offeror requests that this information not be disclosed to the public, except as may be required by law. The offeror also requests that this information not be used in whole or part by the Government for any purpose other than to evaluate the proposal, except that if a contract is awarded to the offeror as a result of or in connection with the submission of the proposal, the Government shall have the right to use the information to the extent provided in the contract."

(c) The offeror shall also specifically identify trade secret information and confidential commercial and financial information on the pages of the proposal on which it appears and shall mark each such page with the following legend:

"This page contains trade secrets or confidential commercial and financial information which the offeror believes to be exempt from disclosure under the Freedom of Information Act and which is subject to the legend contained on the cover page of this proposal."

(d) Information in a proposal identified by an offeror as trade secret information or confidential commercial and financial information shall be used by the Government only for the purpose of evaluating the proposal, except that: (i) If a contract is awarded to the offeror as a result of or in connection with submission of the proposal, the Government shall have the right to use the information as provided in the contract, and (ii) if the same information is obtained from another source without restriction it may be used without restriction.

(e) If a request under the Freedom of Information Act seeks access to information in a proposal identified as trade secret information or confidential commercial and financial information, full consideration will be given to the offeror's view that the information constitutes trade secrets or confidential commercial or financial information. The offeror will also be promptly notified of the request and given an opportunity to provide additional evidence and argument in support of its position, unless administratively unfeasible to do so. If it is determined that information claimed by the offeror to be trade secret information or confidential commercial or financial information is not exempt from disclosure under the Freedom of Information Act, the offeror will be notified of this determination prior to disclosure of the information.

(f) The Government assumes no liability for the disclosure or use of information contained in a proposal if not marked in accordance with paragraphs (b) and (c) of this provision. If a request under the Freedom of Information Act is made for information in a proposal not marked in accordance with paragraphs (b) and (c) of this provision, the offeror concerned shall be promptly notified of the request and given an opportunity to provide its position to the Government. However, failure of an offeror to mark information contained in a proposal as trade secret information or confidential commercial or financial information will be treated by the Government as evidence that the information is not exempt from disclosure under the Freedom of Information Act, absent a showing that the failure to mark was due to unusual or extenuating circumstances, such as a showing that the offeror had intended to mark, but that markings were omitted from the offeror's proposal due to clerical error.

(End of provision)

1452.226-70 Indian preference.

As prescribed in 1404.7003(a), insert the following clause in solicitations issued and contracts awarded (a) by the Bureau of Indian Affairs except those pursuant to Title I and to Indian Tribes and Indian Organizations under Title II of Pub. L. 93-638 (25 U.S.C. 450 *et seq.* and 25 U.S.C. 455 *et seq.*, respectively); (b) a contracting activity other than the Bureau of Indian Affairs when the contract is entered into pursuant to an act specifically authorizing contracts with Indian organizations, and (c) a contracting activity other than the Bureau of Indian Affairs when the work to be performed is specifically for the benefit of Indians and is in addition

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to any incidental benefits which might otherwise accrue to the general public.

INDIAN PREFERENCE—DEPARTMENT OF THE INTERIOR (APR 1984)

(a) The Contractor agrees to give preferences to Indians who can perform the work required regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation for training and employment opportunities under this contract and, to the extent feasible consistent with the efficient performance of this contract, training and employment preferences and opportunities shall be provided to Indians regardless of age (subject to existing laws and regulations), sex, religion, or tribal affiliation who are not fully qualified to perform under this contract. The Contractor also agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of any subcontracts consistent with the efficient performance of this contract. The Contractor shall maintain such records as are necessary to indicate compliance with this paragraph.

(b) In connection with the Indian employment preference requirements of this clause, the Contractor shall also provide opportunities for training incident to such employment. Such training shall include on-the-job, classroom, or apprenticeship training which is designed to increase the vocational effectiveness of an Indian employee.

(c) If the Contractor is unable to fill its training and employment needs after giving full consideration to Indians as required by this clause, those needs may be satisfied by selection of persons other than Indians in accordance with the clause of this contract entitled "Equal Opportunity".

(d) If no Indian organizations or Indian-owned economic enterprises are available for awarding of subcontracts in connection with the work performed under this contract, the Contractor agrees to comply with the provisions of this contract involving utilization of small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, or labor surplus are concerns.

(e) As used in this clause:

(1) *Indian* means a person who is a member of an Indian Tribe. If the Contractor has reason to doubt that a person seeking employment preference is an Indian, the Contractor shall grant the preference but shall require the individual within thirty (30) days to provide evidence from the Tribe concerned that the person is a member of that Tribe.

(2) *Indian Tribe* means an Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85

Stat. 668; 43 U.S.C. 1601) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(3) *Indian organization* means the governing body of any Indian Tribe or entity established or recognized by such governing body in accordance with the Indian Financing Act of 1974 (88 Stat. 77; 25 U.S.C. 1451); and

(4) *Indian-owned economic enterprise* means any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership shall constitute not less than 51 percent of the enterprise.

(f) The Contractor agrees to include the provisions of the clause including this paragraph (f) in each subcontract awarded under this contract.

(g) In the event of noncompliance with this clause, the Contractor's right to proceed may be terminated in whole or in part by the Contracting Officer and the work completed in a manner determined by the Contracting Officer to be in the best interests of the Government.

(End of clause)

[49 FR 14267, Apr. 10, 1984. Redesignated at 60 FR 53280, Oct. 13, 1995]

1452.226-71 Indian preference program.

As prescribed in 1404.7003(b), insert the following clause in all solicitations and contracts, awarded by the contracting activity which may exceed \$50,000, and which contain the clause at 1452.204-71, and where it is determined by the Contracting Officer, prior to solicitation, that the work under the contract will be performed in whole or in part on or near an Indian reservation(s). The clause may also be included in solicitations issued and contracts awarded by a contracting activity which may not exceed \$50,000 but which contain the clause at 1452.204-71 and which, in the opinion of the contracting officer, offer substantial opportunities for Indian employment, training, and subcontracting.

INDIAN PREFERENCE PROGRAM—DEPARTMENT OF THE INTERIOR (APR 1984)

(a) In addition to the requirements of the clause of this contract entitled "Indian Preference—Department of the Interior", the Contractor agrees to establish and conduct an Indian preference program which will expand the opportunities for Indian organizations and Indian-owned economic enterprises

to receive a preference in the awarding of subcontracts and which will expand opportunities for Indians to receive preference for training and employment in connection with the work to be performed under this contract. In this connection, the contractor shall:

(1) Designate a liaison officer who will: (i) Maintain liaison with the Government and Tribe(s) on Indian preference matters; (ii) supervise compliance with the provisions of this clause; and (iii) administer the Contractor's Indian preference program.

(2) Advise its recruitment sources in writing and include a statement in all advertisements for employment that Indian applicants will be given preference in employment and training incident to such employment.

(3) Not less than twenty (20) calendar days prior to commencement of work under this contract, post a written notice in the Tribal office of any reservations on which or near where the work under this contract is to be performed, which sets forth the Contractor's employment needs and related training opportunities. The notice shall include the approximate number and types of employees needed, the approximate dates of employment; the experience or special skills required for employment, if any; training opportunities available; and all other pertinent information necessary to advise prospective employees of any other employment requirements. The Contractor shall also request the Tribe(s) on or near whose reservation(s) the work is to be performed to provide assistance to the Contractor in filling its employment needs and training opportunities. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to contract in regard to the posting of notices and requests for Tribal assistance.

(4) Establish and conduct a subcontracting program which gives preference to Indian organizations and Indian-owned economic enterprises as subcontractors and suppliers under this contract. Consistent with the efficient performance of this contract, the Contractor shall give public notice of existing subcontracting opportunities by soliciting bids or proposals only from Indian organizations or Indian-owned economic enterprises. The Contractor shall request assistance and information on Indian firms qualified as suppliers or subcontractors from the Tribe(s) on or near whose reservation(s) the work under the contract is to be performed. The Contracting Officer will advise the Contractor of the name, location, and phone number of the Tribal officials to be contacted in regard to the request for assistance and information. Public notices and solicitations for existing subcontracting opportunities shall provide an equitable opportunity for Indian firms to submit bids or proposals by including: (i) A

clear description of the supplies or services required including quantities, specifications, and delivery schedules which facilitate the participation of Indian firms; (ii) a statement indicating the preference will be given to Indian organizations and Indian-owned economic enterprises in accordance with section 7(b) of Pub. L. 93-638; (88 Stat. 2205; 25 U.S.C. 450e(b)); (iii) definitions for the terms *Indian organization* and *Indian-owned economic enterprise* as prescribed under the "Indian Preference—Department of the Interior" clause of this contract; (iv) a representation to be completed by the bidder or offeror that it is an Indian organization or Indian-owned economic enterprise; and (v) a closing date for receipt of bids or proposals which provides sufficient time for preparation and submission of a bid or proposal. If after soliciting bids from Indian organizations and Indian owned economic enterprises, no responsive bid is received, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference—Department of the Interior" clause of this contract. If one or more responsive bids are received, award shall be made to the low responsible bidder if the bid price is determined to be reasonable. If the low responsive bid is determined to be unreasonable as to price, the Contractor shall attempt to negotiate a reasonable price and award a subcontract. If a reasonable price cannot be agreed upon, the Contractor shall comply with the requirements of paragraph (d) of the "Indian Preference—Department of the Interior" clause of the contract.

(5) Maintain written records under this contract which indicate: (i) The names and addresses of all Indians seeking employment for each employment position available under this contract; (ii) the number of types of positions filled by (A) Indians and (B) non-Indians, and the name, address and position of each Indian employed under this contract; (iii) for those positions where there are both Indian and non-Indian applicants, and a non-Indian is selected for employment, the reason(s) why the Indian applicant was not selected; (iv) actions taken to give preference to Indian organizations and Indian-owned economic enterprises for subcontracting opportunities which exist under this contract; (v) reasons why preference was not given to Indian firms as subcontractors or suppliers for each requirement where it was determined by the Contractor that such preference would not be consistent with the efficient performance of the contract, and (vi) the names and addresses of all Indian organizations and Indian-owned economic enterprises (A) contacted, and (B) receiving subcontract awards under this contract.

(6) The Contractor shall submit to the Contracting Officer for approval a semiannual report which summarizes the Contractor's Indian preference program and indicates (i) the number and types of available positions

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filled and dollar amounts of all subcontracts awarded to (a) Indian organizations and Indian-owned economic enterprises and (b) all other firms.

(7) Records maintained pursuant to this clause will be kept available for review by the Government until expiration of one (1) year after final payment under this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulation.

(b) For purposes of this clause, the following definitions of terms shall apply:

(1) The terms *Indian*, *Indian Tribe*, *Indian Organization*, and *Indian-owned economic enterprise* are defined in the clause of this contract entitled "Indian Preference."

(2) *Indian reservation* includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 et seq.).

(3) *On or near an Indian Reservation* means on a reservation or reservations or within that area surrounding an Indian reservation(s) where a person seeking employment could reasonably be expected to commute to and from in the course of a workday.

(c) Nothing in the requirements of this clause shall be interpreted to preclude Indian Tribes from independently developing and enforcing their own Indian preference requirements. Such requirements must not hinder the Government's right to award contracts and to administer their provisions.

(d) The Contractor agrees to include the provisions of this clause including this paragraph (d) in each subcontract awarded under this contract and to notify the Contracting Officer of such subcontracts.

(e) In the event of noncompliance with this clause, the Contractor's right to proceed may be terminated in whole or in part by the Contracting Officer and the work completed in a manner determined by the Contracting Officer to be in the best interest of the Government.

(End of clause)

[49 FR 14267, Apr. 10, 1984. Redesignated at 60 FR 53280, Oct. 13, 1995]

1452.228-7 Insurance—liability to third persons.

(a) As prescribed in 1428.311-2, the clause at FAR 52.228-7, Insurance—Liability to Third Persons, shall be modified before insertion into solicitations and contracts by—

(1) Changing the title of the clause to read "Insurance—Liability to Third Persons (APR 1984) (Deviations)"; and

(2) Changing the first sentence in subparagraph (c)(2) of the clause to read "For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise but subject to the 'Limitation of Cost' or 'Limitation of Funds' clause of this contract."

(b) As prescribed in FAR 52.103(a) and 52.107(f), the clause at FAR 52.252-6, Authorized Deviations in Clauses, shall be inserted into solicitations and contracts containing the clause in paragraph (a) of this section.

1452.228-70 Liability insurance.

As prescribed in 1428.301, insert the following clause in all contracts where circumstances warrant the carrying of insurance by the contractor (see FAR 28.301 and 28.306):

LIABILITY INSURANCE—DEPARTMENT OF THE INTERIOR (JUL 1995)

(a) The contractor shall procure and maintain during the term of this contract and any extension thereof liability insurance in form satisfactory to the Contracting Officer by an insurance company which is acceptable to the Contracting Officer. The named insured parties under the policy shall be the Contractor and the United States of America. The amounts of the insurance shall be not less than as follows:

- \$ _____ each person.*
- \$ _____ each occurrence.*
- \$ _____ property damage.*

(b) Each policy shall have a certificate evidencing the insurance coverage. The insurance company shall provide an endorsement to notify the Contracting Officer 30 days prior to the effective date of cancellation or termination of the policy or certificate; or modification of the policy or certificate which may adversely affect the interest of the Government in such insurance. The certificate shall identify the contract number, the name and address of the Contracting Officer, as well as the insured, the policy number and a brief description of contract services to be performed. The contractor shall furnish the Contracting Officer with a copy of an acceptable insurance certificate prior to beginning the work.

*These amounts to be set by the Contracting Officer.

(End of clause)

[60 FR 53280, Oct. 13, 1995]

1452.228-71 Aircraft and general public liability.

As prescribed in 1428.306-70(c)(1), insert the following clause in all fixed-price contracts for operation of aircraft with contractor-furnished pilot:

AIRCRAFT AND GENERAL PUBLIC LIABILITY INSURANCE—DEPARTMENT OF THE INTERIOR
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(a) The contractor, at the contractor's expense, agrees to maintain, during the continuance of this contract, aircraft liability and general public liability insurance with limits of liability for (1) bodily injury to or death of aircraft passengers of not less than \$75,000 for any one passenger and a limit for each occurrence in any one aircraft of at least an amount equal to the sum produced by multiplying \$75,000 by 75 percent of the total number of passenger seats installed in the aircraft, (2) bodily injury or death of persons (excluding passengers) of not less than \$75,000 for any one person in any one occurrence and \$300,000 for each occurrence, and (3) property damage of not less than \$100,000 for each occurrence, or (4) a single limit of liability for each occurrence equal to or greater than the combined required minimums set forth in (1) through (3) above.

(b) The contractor agrees to maintain workers' compensation and other legally required insurance with respect to the contractor's own employees and agents.

(End of clause)

[54 FR 10989, Mar. 16, 1989]

1452.228-72 Liability for loss or damage.

As prescribed in 1428.306-70(c)(2), insert the following clause in all fixed-price contracts involving the use of aircraft with Government-furnished pilot where the Government does not have a property interest in the aircraft:

LIABILITY FOR LOSS OR DAMAGE—
DEPARTMENT OF THE INTERIOR (APR 1984)

(a) The Contractor shall indemnify and hold the Government harmless from any and all loss or damage to the aircraft furnished under this contract except as provided in paragraph (d) of this clause. For the purpose of fulfilling its obligation under this clause, the Contractor shall procure and maintain during the term of this contract, and any extension thereof, hull insurance acceptable to the Contracting Officer. The Contractor's insurance coverage shall apply to pilots furnished by the Government who operate the aircraft. The contractor may request a list of

Government pilots by name and qualification who are potential pilots.

(b) Prior to the commencement of work hereunder, the Contractor shall furnish to the Contracting Officer a copy of the insurance policy or policies or a certificate of insurance issued by the underwriter(s) showing that the coverage required by this clause has been obtained.

(c) Each policy or certificate evidencing the insurance shall contain an endorsement which provides that the insurance company will notify the Contracting Officer 30 days prior to the effective date of any cancellation or termination of any policy or certificate or any modification of a policy or certificate which adversely affects the interests of the Government in such insurance. The notice shall be sent by registered mail and shall identify this contract, the name and address of the contracting office, the policy, and the insured.

(d) If the aircraft is damaged or destroyed while in the custody and control of the Government, the Government will reimburse the Contractor for the deductible stipulated in the insurance coverage (if any) as follows:

(1) In-Motion Accidents—Up to 5% of the current insured value of the aircraft stated in the policy, or \$10,000.00, whichever is less.

(2) Not In-Motion Accidents—Up to \$250.00 per accident. Such reimbursement shall not be made, however, for loss or damage to the aircraft resulting from: (1) Normal wear and tear, (2) negligence or fault in maintenance of the aircraft by the Contractor, or (3) a defect in construction of the aircraft or a component thereof.

(e) If damage to the aircraft is established to be the fault of the Government, rental payments to the Contractor during the repair period will be made as set forth elsewhere in this contract. The Government may, at its option, make necessary repairs or return the aircraft to the Contractor for repair. In the event the aircraft is lost, destroyed, or damaged so extensively as to be beyond repair, no rental payment will be made to the Contractor thereafter.

(f) Any failure to agree as to the responsibility of the Government or the Contractor under this clause shall, after a final finding and determination by the Contracting Officer, be considered a dispute within the meaning of the "Disputes" clause of this contract.

(End of clause)

1452.228-73 Liability for loss or damage (property interest).

As prescribed in 1428.306-70(c)(3), insert the following clause in all fixed-price contracts involving the use of aircraft with Government-furnished pilot where the Government has a property

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interest in the aircraft (e.g., lease with purchase option):

LIABILITY FOR LOSS OR DAMAGE— DEPARTMENT OF THE INTERIOR (APR 1984)

(a) The Government assumes all risk and liability for damage to or loss of the aircraft for the term of this contract, while the aircraft is in the Government's possession, except for: (1) Normal wear and tear to the aircraft, or (2) loss which occurs as a result of negligence or fault in maintenance of the aircraft by the contractor, or (3) loss resulting from a latent defect in the construction of the aircraft or a component thereof.

(b) In the event of damage to the aircraft, the Government may, at its option, make the necessary repairs with its own facilities, or by contract, or pay the Contractor the reasonable cost of repair of the aircraft. If damage to the aircraft is established to be the fault of the Government, rental payments to the Contractor during the repair period will be made as set forth elsewhere in this contract.

(c) In the event the aircraft is lost, destroyed, or damaged so extensively as to be beyond repair, no rental payment will be made to the Contractor thereafter, but the Government will pay to the Contractor a sum equal to the fair market value of the aircraft just prior to such loss, destruction, or extensive damage less the salvage value of the aircraft.

(d) The Contractor certifies that the contract price does not include any cost attributable to insurance or to any reserve fund it has established to protect its interests in or use of the aircraft, regardless of whether or not the insurance coverage applies for the period during which the Government has

possession of the aircraft. If, in the event of loss or damage to the aircraft, the Contractor receives compensation for such loss or damage, in any form, from any source, the amount of such compensation shall be credited to the Government in determining the amount of the Government's liability under this clause; except that this shall not apply to proceeds of insurance received solely as an advance of insurance pending determination of Government liability, or for an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss or damage, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and such rights shall be immediately assigned to the Government. Except as the Contracting Officer may permit in writing, the Contractor shall neither release nor discharge any third party from liability for such loss or damage nor otherwise compromise or adversely affect the Government's subrogation or other rights hereunder. The Contractor shall cooperate with the Government in any suit or action undertaken by the Government against any such third party.

(f) Any failure to agree as to the responsibility of the Government or the Contractor under this clause shall, after a final finding and determination by the Contracting Officer, be considered a dispute within the meaning of the "Disputes" clause of this contract.

(End of clause)

[49 FR 14267, Apr. 10, 1984, as amended at 60 FR 53280, Oct. 13, 1995]

PARTS 1453-1499 [RESERVED]